

## **PART 6      ALLEGATIONS OF QUID PRO QUOS**

### **Chapter 36:   Tobacco and the 1996 Election Cycle**

On August 5, 1997, President Clinton signed into law a landmark balanced budget agreement passed by the 105th Congress.<sup>1</sup> This agreement actually incorporated two bills, a tax relief bill and the balanced budget bill.<sup>2</sup> Buried in the tax bill's "miscellaneous provisions" section was a little-noticed, one-sentence, 46-word provision that stated that tobacco companies would be entitled to claim a tax credit of \$50 billion based on a settlement agreement in a major anti-tobacco civil litigation matter. In that settlement agreement, tobacco companies have agreed to pay \$368.5 billion over the next 25 years to settle anti-tobacco lawsuits, compensate people injured by smoking, and finance health programs. In return, the companies would reduce their exposure in future lawsuits. This settlement has not yet been approved by Congress or the President.<sup>3</sup>

The Minority was interested in investigating how this billion-dollar-a-word provision wound up in the balanced budget agreement, particularly in light of the tobacco industry's substantial political contributions to the Republican Party and the tobacco industry connections to Haley Barbour, former chairman of the Republican National Committee ("RNC"). Tobacco companies gave more than \$10 million overall in the 1996 election cycle, about \$8.5 million to Republicans. During the period when Barbour was chairman of the RNC, he attempted to block unfavorable tobacco legislation at the federal and state levels and lobbied against anti-tobacco litigation brought by private individuals and state agencies. Just two days after one of Barbour's interventions, one tobacco company donated a half-million dollars to the RNC. After leaving the RNC to return to his lobbying firm in early 1997, Barbour was immediately retained as a lobbyist for the five largest tobacco firms.

The Minority looked at the role tobacco played in the 1996 elections.

### **FINDING**

**During the 1996 election cycle, tobacco companies contributed roughly \$8.5 million in soft money to the Republicans, much of which was raised by Haley Barbour. There are grounds for suspecting that Barbour assisted the industry in exchange for campaign money, but the Committee did not investigate these troubling allegations.**

### **THE TOBACCO INDUSTRY'S POLITICAL CONTRIBUTIONS DURING THE 1996 ELECTION CYCLE**

The tobacco industry gave roughly \$10.1 million overall in political contributions in the 1996 election cycle. According to the nonpartisan Center for Responsive Politics, the industry gave a total of \$6.8 million in soft money to both parties, most of it to the Republican Party.<sup>4</sup> Tobacco PACs and company employees contributed another \$3.3 million to federal candidates in

the 1996 cycle, again most of it to Republicans.<sup>5</sup> In fact, Philip Morris Companies, Inc. ("Philip Morris") was the number one overall campaign contributor in the entire 1996 election cycle with \$4.2 million in hard and soft money, with nearly 80 percent contributed to Republicans.<sup>6</sup> In addition to these campaign contributions, tobacco firms in 1996 spent nearly \$27 million lobbying Congress and federal agencies. Philip Morris led the way again, spending \$19.6 million, according to federal lobby disclosure forms.

In previous election cycles, the industry divided its campaign contributions equally between the parties, but in the 1996 election cycle over 80 percent of tobacco's \$10.1 million in political donations went to Republicans. The GOP collected \$5.8 million in soft money from tobacco interests and tobacco PACs and company executives contributed \$2.5 million to Republican candidates at the federal level. The two largest soft-money donors to national Republican party committees were Philip Morris with \$2.5 million and RJ Reynolds/RJR Nabisco ("RJR") with \$1.2 million.<sup>7</sup>

There are several likely reasons for the industry's dramatic shift of support to the Republican Party. Shortly after President Clinton took office, Administration officials proposed sharp increases in cigarette taxes as a way of financing the expansion of health care. Later, the President proposed that the Food and Drug Administration ("FDA") be given the authority to regulate tobacco as a drug. In Congress, Representative Henry Waxman (D-Calif.) chaired a subcommittee that held hearings on the tobacco industry. Senator Richard Durbin (D-Ill.), a House member from 1983 until winning election to the Senate in 1996, clashed with the industry when he pushed for smoking to be banned on all domestic flights.

On the state level, many Democrats were also supportive of efforts to curb smoking in public places. State government became the arena for one of the biggest threats to the industry: a lawsuit by state attorneys general against tobacco companies to recoup medical costs the states have incurred in treating smokers.

Apparently, as part of an effort to thwart these and other initiatives, the major tobacco companies contributed millions of dollars on the Republican Party. Tobacco companies not only gave directly to the RNC, they contributed to Speaker Newt Gingrich's GOPAC, a political action committee; Senator Bob Dole's Better America Foundation ("BAF"), a nonprofit think tank; and to the Dole Foundation, a charitable entity linked to the Senator. (Philip Morris and RJR each gave \$100,000 to BAF.) After Haley Barbour launched the National Policy Forum, a Republican Party think tank, in the spring of 1993, tobacco companies were among the biggest backers, contributing a total of \$445,000; the biggest contributions included \$200,000 from Philip Morris and \$100,000 from RJR.

### **REPUBLICAN ASSISTANCE TO TOBACCO COMPANIES**

According to published reports, the tobacco companies have received valuable benefits in exchange for their political "investments." Common Cause Magazine, citing a 1994 study published in the Journal of the American Medical Association, noted: "House members receiving

the most tobacco money were 14.4 times as likely to vote with the industry as members receiving the least; in the Senate the number was 42.2."<sup>8</sup> Other examples of Republican efforts on the industry's behalf include:

O For nearly three years after the Republicans took control of Congress in 1994, there was not a single congressional hearing on cigarettes and health.<sup>9</sup> It was not until late 1997, after the tobacco settlement was announced, that such hearings were held. Even one long-time industry advocate, Representative Thomas Bliley (R-Virginia), began to criticize the industry, and his committee subpoenaed hundreds of documents from tobacco companies that, according to press reports "apparently contain more evidence that cigarette makers deliberately misled the public about smoking's dangers."<sup>10</sup>

O In the 104th Congress, pro-tobacco lawmakers defeated efforts to strip funding for tobacco farmers from the Agriculture Department's budget in both 1995 and 1996<sup>11</sup> and fought off attempts to raise tobacco taxes and preserved millions of dollars in federal subsidies, including the ability to take tax deductions for advertising costs.<sup>12</sup> In 1994, the tobacco industry spent nearly \$5 billion on advertising.<sup>13</sup>

O Other tobacco-related legislation in the 104th Congress never came to a vote. For example, Representative Scotty Baesler (D-Ky.) bill, that would have codified the federal government's authority to regulate tobacco, died in committee.<sup>14</sup>

O During the 1996 presidential campaign, GOP candidate Bob Dole made clear that he also was opposed to giving the FDA increased authority to regulate tobacco. Dole stated that he did not regard smoking as an addiction. In his view, it was merely a habit -- like drinking milk.<sup>15</sup> Even after Dole was widely criticized for that statement, he repeated his assertion that smoking was not addictive.<sup>16</sup>

O After Dole's statement, Barbour was asked if he thought smoking was addictive, but he refused to be pinned down. In the words of a press report, the RNC chairman "effectively dodged a reporter's insistent questioning on whether he believes cigarette smoking is addictive."<sup>17</sup> Barbour explained that he couldn't answer the question because he was not a scientist or a chemist.<sup>18</sup>

### **HALEY BARBOUR ASSISTED TOBACCO**

Haley Barbour became RNC chairman in January 1993 and served a four-year term. During his tenure, he was unquestionably the party's top fundraiser. Documents obtained by the Committee indicate that Barbour was heavily involved in raising money from the tobacco industry.

One RNC document the Committee received is a handwritten note from Barbour to Craig Fuller, the Philip Morris official in charge of lobbying. In the note, Barbour thanked Fuller for a \$50,000 contribution and mentioned that he was "working on a replacement for John Moran" --

the RNC finance chairman -- which suggests that he wanted Fuller to propose someone for the job.<sup>19</sup> Barbour and Fuller had worked together in the Reagan Administration: Barbour served in the White House political affairs office while Fuller was Vice President Bush's chief of staff.<sup>20</sup>

At the same time Barbour was collecting millions of dollars from Fuller and other tobacco-industry executives, he was contacting state-level politicians on the industry's behalf, according to press reports. In the spring of 1995, Mark Killian, a conservative Republican who served as speaker of the Arizona House of Representatives, received a telephone call at his home from Barbour. Killian later said he thought Barbour might be calling "to congratulate us on Arizona's ability to bring forth the revolution on tax cuts and welfare reform and medical savings accounts."<sup>21</sup> However, according to Killian, the real purpose of Barbour's call was to push a piece of legislation that was supported by the tobacco industry.<sup>22</sup> This was a so-called "pre-emption" bill that would have prevented cities from imposing smoking rules more restrictive than those enacted at the state level. Barbour apparently urged Killian to let the bill go to a vote. Barbour later claimed "that he was simply making routine checks on the status of legislation, not attempting to impose pressure," according to a press report.<sup>23</sup>

Killian, a longtime opponent of smoking, said he was angered by Barbour's call. "It made me mad," he said. "And I said no."<sup>24</sup> According to a press report, Killian "said he ended up blocking the bill because he thinks 'cities ought to be able to make their own rules and regulations.' But he said another factor in his decision was his anger that Mr. Barbour got involved in the matter."<sup>25</sup> In March of 1996, Killian "joined with Democrats in urging [Arizona] Attorney General Grant Woods to join the lawsuit initiated by Mississippi against such tobacco giants as Philip Morris and RJR Nabisco."<sup>26</sup> Killian said: "I think it's a great idea. I think the tobacco companies have been ripping off this country for years."<sup>27</sup>

Also in the spring of 1995, Barbour telephoned Republican Governor George W. Bush of Texas "to check on a bill to prevent cities from adopting strict smoking restrictions," according to the Wall Street Journal. "He was told the bill would be vetoed, and it was."<sup>28</sup> A story in the Arizona Republic on that incident stated that Barbour had called Bush to encourage Texas "to drop legislation opposed by the tobacco industry."<sup>29</sup>

On October 16, 1996, Barbour flew to Arizona to attend a Republican fundraising event and he met with Governor Fife Symington. The next day, Governor Symington ordered Arizona Attorney General Grant Woods, a fellow Republican, to drop his lawsuit against the major tobacco companies.<sup>30</sup> Woods ignored the order and continued pursuing the lawsuit.<sup>31</sup> One day after Governor Symington issued the order, Philip Morris contributed \$500,000 in soft money to a Republican party committee, according to FEC records.

Although spokesmen for both Governor Symington and Barbour denied that the tobacco litigation came up during the October 16 meeting,<sup>32</sup> there are grounds for skepticism. Ron Motley, a lawyer involved in the tobacco litigation, told a reporter that Barbour "just runs around the country trying to stop these lawsuits."<sup>33</sup> Symington's credibility was damaged on September 3, 1997 when he was convicted on federal criminal charges.<sup>34</sup>

## **TOBACCO SETTLEMENT AND THE \$50 BILLION TOBACCO TAX CREDIT**

The tobacco companies are currently seeking congressional approval of a proposed settlement of the multi-state litigation and have contributed large sums of money to the party most likely to take a pro-industry line. During the month of June 1997 -- just before the settlement was announced -- Philip Morris and RJR each donated \$100,000 in soft money to the RNC. Between January 1 and June 30, the two companies gave a total of \$575,000 to the RNC.

The tobacco companies have also mounted a major lobbying campaign to win support for the settlement. One of their lobbyists is Haley Barbour, whose firm was retained in early 1997 “for six figures per month by the nation’s five biggest tobacco companies -- including Philip Morris” according to a press report.<sup>35</sup> Barbour’s firm was hired just weeks after Barbour stepped down from his post as RNC chairman.

On September 29, 1997, Time magazine reported that Barbour was behind the \$50 billion tobacco tax break. Citing anonymous Republican Party officials as sources, the magazine stated that Barbour persuaded Speaker Newt Gingrich and Senate Majority Leader Trent Lott to put the tax break in the balanced-budget agreement “just minutes before it was inked.”<sup>36</sup> When the provision was uncovered by freshmen Senators Richard Durbin (D-Ill.) and Susan Collins (R-Maine), it was defeated by vote in both the Senate and House and stripped from the bill.

USA Today reported on August 29, 1997 that the provision had been written by tobacco industry representatives. Kenneth Kies, staff director of the Joint Committee on Taxation, was quoted as saying: “The industry wrote it and submitted it, and we just used their language.”<sup>37</sup> Kies, as discussed below, denies making that statement.

### **HALEY BARBOUR AND KENNETH KIES**

In an effort to learn more about the tax break, Minority Counsel wrote letters to Barbour’s attorney and to Kenneth Kies on September 10, 1997.

The letter to Barbour’s attorney, Terrence O’Donnell, included ten interrogatories for Barbour that the Minority sought to have answered by September 19. Interrogatories were sent because Barbour would not agree to a continuation of his deposition that had been limited to the issue of foreign contributions to the National Policy Forum. The interrogatories asked Barbour about his fundraising from and lobbying activities for the tobacco industry in general and the companies Philip Morris and RJR in particular. Barbour was also asked about his lobbying of state and local officials regarding legislation or regulation affecting the tobacco industry. Most importantly, Barbour was asked about his alleged role in inserting a provision in the balanced budget agreement of 1997 that would give tobacco companies a \$50 billion tax credit in connection with the tobacco settlement.<sup>38</sup>

On September 19, O’Donnell replied with a letter in which he noted that Barbour had already testified. He also questioned the legal authority of the Minority’s request and how the

interrogatories related to the Committee's mandate<sup>39</sup> Minority Counsel responded on September 24 with a letter clarifying the Minority's request and noted that former White House Deputy Chief of Staff Harold Ickes was deposed twice for a total of over two and a half days, thus the request for more information from Barbour was not unusual. The letter also explained that the interrogatories were within the scope and mandate of the Committee because the tobacco industry was a major contributor of soft money during the last election, especially to the Republican Party. Finally, the letter suggested that answering these interrogatories would provide Barbour with a forum to rebut the Time magazine assertion that he was directly involved in the \$50 billion tax credit for the tobacco industry. Without a response, the letter stated that the Minority "will assume the article to have been correct."<sup>40</sup>

The Minority received no response.

The September 10 letter to Kies asked him to agree to a brief interview with Committee staff to discuss the statement attributed to him by USA Today and more importantly "to identify the lobbyist who presented the provision as well as the company he represented."<sup>41</sup>

On September 30, after receiving no response from Kies, Minority Counsel sent a follow-up letter to Kies asking again for a brief interview to discuss the \$50 billion tax credit for the tobacco industry and its possible connection to numerous campaign contributions by the industry during the 1996 election cycle.<sup>42</sup> On October 7, Kies responded with a letter to Senator Glenn in which he stated that he had submitted a letter to the editor of USA Today that was published on September 19.<sup>43</sup> In the USA Today letter, Kies disavowed the quotes attributed to him in the original article: "Contrary to the erroneous quote attributed to me, [the statutory language] was drafted by the legislative drafting staff of the House and Senate."<sup>44</sup> Furthermore, Kies stated in his USA Today letter that he "did not meet with any representative of the tobacco industry during any time that the tax bill was under consideration."<sup>45</sup> He suggested that "inquiries concerning the so-called tobacco credit provision" should go to "the conferees on the 1997 tax bill."<sup>46</sup> Kies did not comment on whether a tobacco industry representative could have written the language for the provision and gotten it submitted without meeting with Kies. Moreover, USA Today did not publish either a retraction or a correction of its story.

While no one openly acknowledges all of the details surrounding the attempt to secure the \$50 billion tobacco tax credit, the evidence clearly suggests that top Republicans were involved. The Washington Post reported that "at least two days before most people realized it -- the Gingrich-controlled House Republican Conference posted on the Internet a list of congressional 'Republican Wins' in the budget and tax bills. Included among them was the \$50 billion credit provision for the tobacco industry." Furthermore, according to the Post, not only were the GOP leaders "among Congress's top recipients of tobacco industry funds [over the last ten years]: Lott got \$50,250 and Gingrich \$72,750," but "some in Congress" suggest "the lobbying firm of former Republican national chairman Haley Barbour and R.J. Reynolds pushed" for the provision.<sup>47</sup> Finally, Washingtonian magazine directly linked Barbour and the \$50 billion tax break by citing "insiders" who say that Barbour "slipped it into the bill himself while working with awed legislative staffers who were drafting the measure."<sup>48</sup>

As with most other avenues of the Minority's investigation, the tobacco inquiry encountered several obstacles. Barbour, through his attorney, failed to respond to the Minority's interrogatories and refused to continue his deposition or otherwise clarify his role in the \$50 billion tax credit. Committee Chairman Thompson also rejected the Minority's request to issue a second hearing subpoena to Barbour to explain publicly his role in obtaining the \$50 billion tobacco tax credit.

### **CONCLUSION**

The tobacco industry is a major funder of the Republican Party through hard and soft money. Former RNC Chairman Haley Barbour, who raised much of this money, has by all accounts used his influence to assist the industry on the state and federal levels. Perhaps the biggest payoff for tobacco's \$8.5 million investment in the Republican Party during the 1996 election cycle was the effort to include a \$50 billion tax credit for the tobacco industry in the 1997 balanced budget agreement.

1. This legislation is actually two laws, Public Law 105-33 and Public Law 105-34. Public Law 105-33 is the Balanced Budget Act of 1997. Public Law 105-34 is the Taxpayer Relief Act of 1997. Both were signed into law on August 5, 1997.
2. The tax relief bill was H.R. 2014, the Revenue Reconciliation Act of 1997. The balanced budget bill was H.R. 2015, the Balanced Budget Act of 1997.
3. Washington Post, 8/17/97.
4. Keen, Jennifer and John Daly. Beyond the Limits. Washington, D.C.: Center for Responsive Politics, 2/97.
5. Makinson, Larry. The Big Picture: Money Follows Power Shift on Capitol Hill. Washington, D.C.: Center for Responsive Politics, 11/97.
6. Makinson.
7. Keen and Daly.

One of the \$100,000 corporate "sponsors" of the Republican presidential nominating convention in San Diego was Philip Morris. Additionally, the company contributed about \$200,000 to help stage the presidential debates. Tobacco firms also sprinkle contributions among Washington think tanks and advocacy organizations that support their views, mostly libertarian or free-market oriented groups that lobby against government interference in the economy. These include Citizens for a Sound Economy, the Competitive Enterprise Institute, the Progress and Freedom Foundation, and the American Civil Liberties Union. Philip Morris made headlines in 1996 when reporters discovered the company was the major funder of Contributions Watch, a non-profit group that conducted state-level research on money and politics. The group released a major study on contributions from trial lawyers. (Watzman, Nancy; James Youngclaus; and Jennifer Shecter. Cashing In: A Guide to Money, Votes, and Public Policy in the 104th Congress. Washington, D.C.: Center for Responsive Politics, 1/97, p. 39.)
8. Common Cause Magazine, Winter 1995.
9. New York Times, 6/27/96.
10. Wilmington Star-News, 12/7/97.
11. Watzman, et al, p. 39.
12. Watzman, et al, p. 39.
13. Watzman, et al, p. 39.
14. Watzman, et al, p. 39.
15. Washington Post, 6/22/96.



16. Reuters North American Wire, 6/28/96.
17. Roll Call, 7/8/96.
18. Roll Call, 7/8/96.
19. RNC documents R050910-R050911.
20. Washington Post, 8/3/91; National Journal, 6/28/86.
21. Wall Street Journal, 2/20/96.
22. Wall Street Journal, 2/20/96.
23. Washington Post, 7/6/96.
24. Arizona Republic, 2/15/96.
25. Wall Street Journal, 2/20/96.
26. Arizona Republic, 3/23/96.
27. Arizona Republic, 3/23/96.
28. Wall Street Journal, 3/1/96.
29. Arizona Republic, 10/23/96.
30. Arizona Republic, 10/23/96.
31. Arizona Republic, 10/23/96.
32. Arizona Republic, 10/23/96.
33. Arizona Republic, 10/23/96.
34. Arizona Republic, 9/4/97.
35. National Journal, 3/29/97.
36. Time, 9/29/97.
37. USA Today, 8/29/97.
38. Letter from Minority Counsel to Terrence O'Donnell, 9/10/97.
39. Letter from Terrence O'Donnell to Minority Counsel, 9/19/97.

- 40. Letter from Minority Chief Counsel to Terrence O'Donnell, 9/24/97.
- 41. Letter from Minority Counsel to Kenneth Kies, 9/10/97.
- 42. Letter from Minority Chief Counsel to Kenneth Kies, 9/30/97.
- 43. Letter from Kenneth Kies to Senator Glenn, 10/7/97.
- 44. USA Today, 9/19/97.
- 45. USA Today, 9/19/97.
- 46. USA Today, 9/19/97.
- 47. Washington Post, 8/17/97.
- 48. Washingtonian, 1/98.